

ADMINISTRATIVE ORDER NO. 58-03-19-F

**of the
City Manager of the City of Eugene**

**AMENDING CONSTRUCTION WITHIN AND
USE OF THE PUBLIC WAY RULE R-7.302 AND
REPEALING ADMINISTRATIVE ORDER NO. 58-00-13-F.**

The City Manager of the City of Eugene finds that:

A. Pursuant to the authority of Section 2.019 of the Eugene Code, 1971, Administrative Order No. 58-00-13-F was issued on September 27, 2000, amending and adopting Construction Within and Use of the Public Way Rule R-7.302.

B. Based on the findings set forth in Administrative Order No. 58-03-19-F issued on November 18, 2003 I proposed amendments to Rule R-7.302 and the Utility and Right-of-Way Permits Construction Within and Use of the Public Way Manual attached as Exhibit A thereto, as set forth in finding B of that order.

C. Notice of the proposed amendments was published in the Register Guard for five consecutive days, to-wit, on November 25, 26, 27, 28, 29, 2003. The Notice was also made available for persons who had requested such notice, and provided that written comments would be received thereon for a period of 30 days from the first date of publication.

D. Written comments were received from Comcast of Oregon, to which I make the following specific findings:

Comment 1: An objection was raised to the phrase “amount established” in R-7.302-C-1.3.3 in reference to the fee for an exception permit, as being vague, and Comcast suggested it be revised to “an amount to cover City’s actual cost.”

Finding: No amendments were proposed to be made to this subsection, which remains the same as in the prior Rule. It would be inappropriate to amend substantively a portion of the rule that was not proposed for amendment in the Notice without providing a new opportunity for public comment. (This finding applies also to Comments 2, 3 and 4.) The use of the phrase in the subsection is a direction that the fee be established by the City Manager following the procedures of EC 2.020, which requires a public comment period. No changes were made as a result of this comment.

Comment 2: Comcast objected to the requirement of building and paying for excess capacity that would not be under its control and could be used by a possible competitor, and also objected to being liable for the condition of facilities it was not using as required by R-7.302-E-2.

Finding: Again, this subsection is unchanged from the prior Rule. In addition to the language in this subsection replicating EC 7.302(5) (which cannot be modified or amended by rule), installation of underground conduits in conjunction with a capacity enhancing public project minimizes the inconvenience experienced when utility excavation is performed on an existing street, increases the useful life of the surface, and minimizes the installation cost for the utility. Conduit installed under this Rule remains under the control and ownership of the utility, and the Rule does not address liability for maintaining the condition of the facility. The requirement to install conduit crossings in conjunction with capacity enhancing projects is an appropriate requirement for utility providers using the public way, is required by provisions of the Eugene Code, 1971, and is consistent with City objectives in the promotion of undergrounding. No changes were made to the Rule as a result of this comment.

Comment 3: With respect to R-7.302-E-3.2, Comcast expressed its opposition to: (a) building and paying for excess capacity that would not be under its control and could be used by a competitor; (b) being liable for the condition of a plant it is not using; and (c) the provision regarding its ability to recover a portion of the cost, asserting that recovery of cost should be at fair market value.

Finding: This subsection is also unchanged from the prior Rule and is required to be included in the Rule by EC 7.302(6)(e). One of the objectives is to minimize impacts on the public as a result of reoccurring facility installation and to maximize the useful life of the finished surface. Any excess capacity required of a utility provider remains under the installing provider's control unless relinquished. The Rule does not address liability for maintaining the condition of the facility. The City recognizes the public value provided by competition. Excess capacity may be available to any authorized user of the public way. Requirements regarding compensation are established to enable the initial provider to recover a portion of its costs in a manner that is not discriminatory, does not prevent competition in the service delivery, or become a barrier to other providers. No changes were made to the Rule as a result of this comment.

Comment 4: Comcast expressed a belief that it should be excepted from the requirement of R-7.302-H-1 to provide a public way restoration performance bond or security deposit for any project involving the opening of greater than 400 linear feet of public way because of its requirement to provide the City with a corporate surety bond of \$25,000 under its franchise agreement.

Finding. As with the prior comments, this objection was raised with respect to a subsection that is unchanged from the Rule that has been in effect since September 2000. In addition to this requirement for provision of a restoration performance bond being separate from any franchise bond requirements, R-7.302-H-1.2 provides an exception process for permittees who have demonstrated prior competence in meeting established requirements for restoration activities, and these exception requests are routinely granted. No changes were

made to the Rule as a result of this comment.

Now, therefore, based upon the above findings, which are hereby adopted, the findings in Administrative Order No. 58-03-19, and pursuant to the authority contained in Section 2.019 of the Eugene Code, 1971, I hereby repeal Administrative Order No. 58-00-13-F as of the effective date of this Order, amend Construction Within and Use of the Public Way Rule R-7.302 and the Manual attached as Exhibit A thereto as proposed in Administrative Order No. 58-03-19, and ratify and affirm the unamended portions of Rule R-7.302 and the Manual attached thereto, so that R-7.302 provides in full as follows:

CONSTRUCTION WITHIN AND USE OF THE PUBLIC WAY ADMINISTRATIVE RULE R-7.302

R-7.302-A Construction Within and Use of the Public Way - Policy.

In order to create attractive and healthy neighborhood environments and protect the public's right for the safe and unobstructed use of the public way, applicants wishing to perform work or construction in, or to use, the public way shall first obtain a written permit and shall conform with the standards and procedures provided for in these rules and the provisions, specifications, and conditions contained within the manual on Utility and Right-of-Way Permits, Construction Within and Use of the Public Way, Policies and Procedures, attached hereto as Exhibit A and adopted herein.

R-7.302-B Definitions.

Applicant or Permit Applicant. The person who applies for a right-of-way work permit.

City Engineer. The Director of the Public Works Department of the City of Eugene, or the Director's designee.

Conduit. An underground pipe or other structure constructed and used to contain lengths of wire, cable or other transmission media. A conduit does not include pipes constructed and actively used for the purpose of conveying natural gas, water, stormwater, wastewater, or other liquids.

Elevation view. The above ground height and width of a structure when viewed from the center line of the public way at a point perpendicular to the structure.

GIS format. The format of electronic information, as established by the City Engineer for incorporation into the City's Geographic Information System (GIS).

Inspector. Public Works Department personnel assigned to administer the right-of-way work

permit program.

Major Facility Upgrade. The extension or reconstruction of any facility in which a wire, cable, conduit, or pipe greater than 400 linear feet in length is installed or replaced within the public way.

Provider. A permittee that is a municipal utility, franchisee, or licensee obligated to compensate the city for ongoing use of the public way for the provision of utility or telecommunications services.

Right-of-Way Work Permit. A permit to perform work in the public right-of-way. Permits may include, but are not limited to, Right-of-Way Cut Permits, Right-of-Way Use Permits, Utility Right-of-Way Use Permits, Tree Removal Permits, Traffic Control Permits and Temporary Surfacing Permits.

Street Segment. A portion of a street or alley not exceeding 400 feet, generally consisting of one standard City block.

R-7.302-C Frequency of Opening the Public Ways - Notice Requirements.

1. In order to reduce and mitigate the impact of street openings on the life and function of street and alley surfaces, and minimize the disruption in normal use of streets and alleys, the frequency and timing of the cutting of pavement is limited.

1.1 Cutting of street surfaces for installation of utility or communication facilities is prohibited for a period of five years from the time the street is constructed or resurfaced.

1.2 No street segment, irrespective of age or condition, shall be cut more than once in any 12 month period for placement of new facilities by those providers who received notice of prior street openings pursuant to R-7.302-C-2.

1.3 Exceptions to these prohibitions must be approved in writing by the City Engineer or designee, based on or subject to the following:

1.3.1 Requests for approval to open a street whose surface is less than five years old shall be reviewed and approved, approved with special conditions, or denied. Special conditions may include modified or increased pavement restoration requirements, landscaping, or other requirements to restore disturbed features.

1.3.2 Examples of conditions that may justify exceptions to the prohibition include: required excavation to locate existing facilities when installing a new facility by tunneling, boring, or pushing; or to provide necessary utility services to

a property where no other practicable alternative exists to provide such service.

1.3.3 In addition to the standard permit fees, a fee in an amount established by the City Manager pursuant to Section 2.020 of the Eugene Code, 1971 shall be imposed for review and issuance of an exception permit for cutting a street whose surface is less than five years old.

1.4 Notwithstanding the provisions of R-7.302-A above, in emergency situations verbal authorization may be granted by the Inspector in lieu of a written authorization for an exception to the street cut prohibitions. Emergency situations are those in which immediate repair to damaged or malfunctioning facilities is necessary to restore lost service to customers. Any verbal authorizations shall be subsequently documented in writing by the Inspector.

2. Notice Requirements. A provider planning to install a new facility, or perform a major facility upgrade, within the public way under a standard right-of-way cut permit, greater than 400 linear feet, shall provide notice to the City and all other utilities and license holders identified in the most recent list of providers published by the Inspector who are licensed or franchised to provide services within the project area. The purpose of this notification is to encourage collocation of facilities and minimize impacts on the public way. The notice is intended to provide other utilities and license holders an opportunity to install facilities in a joint trench or to coordinate work along the same street segment while not unduly interfering with the provision of services to the originating provider's customers. Notification timing and format will be determined by the initiating provider so long as the notification purpose and documentation requirements are met. This approach to notification will be monitored and periodically reviewed by the Inspector to determine efficacy in meeting the intent of these rules.

A copy of the current list of providers is attached hereto as Exhibit "B" for informational purposes only. The Inspector shall update the list as new providers become active within the City and provide a copy thereof to the providers reflected in the list.

Individual project notices shall be provided in a manner that documents receipt of notice by the appropriate utilities and license holders. The notice shall include the general anticipated location within the public way and nature of facilities to be placed, along with the proposed project schedule. The notice shall provide, at a minimum, 10 days advance notice excluding Saturday, Sunday, and legal holidays. The notice shall also state the date by which other providers must respond to the notice. Upon request, an applicant must provide the City with documentation of the applicant's notification to other utilities or license holders.

In addition, each January, providers shall submit to the City and all other providers a published list of proposed facility installation or major facility upgrade projects anticipated to occur within the following 24 months. The intent of this annual notification is to provide the City with adequate information to anticipate and manage impacts to the public rights-of-way, and provide other

providers with information helpful in planning for coordination of work and collocation of facilities. This provision is not intended to require that a provider’s marketing plans or proprietary information be published or disclosed to other providers. If a provider determines certain information disclosed to the City to be proprietary, the provider may signify such on the information submitted and withhold that information from disclosure to other providers. The City will respect such designations and protect such information from disclosure to the extent allowed by law.

This provider-initiated notification process is not required for the installation of facilities within new developments that are creating new streets and being processed through the subdivision platting and public street improvement review processes. Through these public review processes a standard notification method is in place that provides opportunity for service providers to coordinate service delivery plans, co-locate facilities and coordinate work in conjunction with the new development.

R-7.302-D Location of Above-Ground Facilities.

1. **Applicability.** The standards contained in this section shall be utilized in the placement of above-ground facilities, including but not limited to junction boxes, controller cabinets, and central distribution boxes, in order to ensure that such facilities placed in the public way do not interfere with the transportation uses of street and alley rights-of-way or with public safety. The provisions of this section do not apply to pay telephones, above-ground wires, cables or lines, or associated poles or support structures located in the public way.

2. **Location Standards.** Except for street lighting facilities or traffic control devices owned by the City, the location of above-ground facilities must conform to all applicable provisions of the Eugene Code, 1971, adopted plans, the City’s Manual on Utility and Right-of-Way Permits, Construction Within and Use of the Public Way, and the following standards:

2.1 **Maximum Size.** Facilities that are placed above-ground shall not:

- 2.1.1 Exceed 6 feet in height, or 6 feet in any width dimension.
- 2.1.2 Exceed 20 square feet “elevation view.”

2.2 **Clearance Setbacks.** The minimum setback standards are:

Minimum Distance from Feature	
<u>Feature</u>	<u>Feet</u>
Alley Intersection	15 feet
Courtesy walks/sidewalks	1 foot
Driveways	5 feet

Fire hydrants	5 feet
Street Trees	10 feet
Back Edge of Street Curb	1 foot
Street Intersections	35 feet
Manholes and Catch basins	5 feet
Drainage Ditches, Swales, Streams	5 feet
Street lights	10 feet
Regulatory signs	Not to block sign
Above ground traffic control facilities	10 feet

2.3 Maximum Number per Street Segment. In order to prevent above-ground facilities from unreasonably interfering with other uses of the public way the facilities may not exceed a maximum cumulative “elevation view” of 100 square feet for each side of a street segment as viewed from the street centerline.

2.4 Placement on Local Streets. Placement of above-ground facilities along local streets must conform to the provisions of the Eugene Local Street Plan and this rule. On local streets, above-ground facilities within the right-of-way shall generally be limited to fire hydrants and main line shut off valves, these facilities may be located between street trees when necessary, so long as their location allows for street tree planting requirements as detailed in R-7.280. If there is an existing public utility easement along the street right-of-way, it shall be the primary location for other above ground facilities. With prior approval of an exception by the City Engineer or designee, other above-ground facilities may be placed in appropriate locations within the rights-of-way if no other reasonable alternative is available.

2.5 Placement on Arterial and Collector Streets. Placement of above-ground facilities along arterial and collector streets must conform to the provisions of the Eugene Arterial and Collector Street Plan (specifically including compliance with adopted local street design standards as required therein), and this rule. On arterial and collector streets, above-ground facilities within the right-of-way shall generally be limited to fire hydrants and main line shut off valves, these facilities may be located between street trees when necessary, so long as their location allows for street tree planting requirements as detailed in R-7.280. If there is an existing public utility easement along the street right-of-way, it shall be the primary location for other above ground facilities. With prior approval of an exception by the City Engineer or designee, other above-ground facilities may be placed in appropriate locations within the rights-of-way if no other reasonable alternative is available.

2.6 Permit Denial. Failure of a proposed above-ground facility to conform to the location standards established in section R-7.302-D.2 shall be cause for denial of a request to place such facilities within the public way, or for a requirement to place a proposed facility underground, or partially underground.

2.7 The City Engineer or designee may grant an exception to the standards for maximum size and elevation view of above-ground facilities if the permit applicant establishes that the larger size is required to meet facility needs and no alternative industry-standard cabinet or enclosure is available. The exception must be in writing.

R-7.302-E Undergrounding Requirements.

1. If the permit is associated with new development, all utilities and communications facilities shall be located underground, at a minimum depth of 30 inches below the city-established street grade or alley grade and 30 inches below ground level in utility easements. Facilities installed in an area identified as a City plant strip shall be located underground, at a minimum depth of 36 inches below the city-established finish surface grade. The City Engineer or designee may approve installation at a depth less than the required depth if topography or other conditions warrant a modification.

2. A licensee or owner of above-ground wires, cables or lines that cross a right-of-way that is subject to a capacity-enhancing improvement project shall install underground conduit crossings at the time of the improvement project, at the licensee's or owner's expense.

3. A permit issued in connection with new development may contain conditions relating to utilities and communications facilities such as, but not limited to:

3.1 Standards for conduit size, location and capacity to be installed, that may vary for different areas of the City, the class of street, location, or other factors; and

3.2 Standards requiring the initial provider in an area to provide extra capacity for later providers, and a process that enables the initial provider to recover a portion of that cost from subsequent providers.

3.3 Prior to imposition of permit conditions relating to standards for conduit size, capacity to be installed, and for the provision of extra capacity, the City Engineer shall complete a standards development process, that provides an opportunity for interested parties to review and comment on such standards.

R-7.302-F Common Trench and Co-location Requirements.

1. In addition to the requirements of Section 7.302 of the Eugene Code, 1971 and these Rules for co-location of and undergrounding of facilities, providers shall utilize common trenches for placement of multiple provider facilities to be installed within the same street segment unless otherwise approved by the Inspector.

2. Providers shall comply with the notice requirements of R-7.302-C-2. of these rules. In addition, no street segment shall be reopened for placement of new facilities by those utilities or license holders who received notice pursuant to R-7.302-C-2. above within the subsequent 12 month period, without the written approval of the City Engineer or designee.

R-7.302-G Provision of Facility Location Information.

1. **Facility Locate service.** All providers must provide facility locate services in response to locate requests from excavators working in the area of underground facilities owned or operated by a provider. Providers must demonstrate the ability to provide such services by submitting documentation to the City showing proof of subscription to the Oregon Utility Notification Center along with evidence of resource commitments to locate service provision either through the capacity of provider employees or through contractual agreement with a locate service provider.

2. **Provision of Facility Map and Location Data.** All providers shall comply with the Mapping and Location Data requirements contained within the license agreements and the requirements of Section 3.420 of the Eugene Code, 1971.

R-7.302-H Bonding and Indemnity Requirements.

1. A public way restoration performance bond or security deposit shall be required for any project that involves the opening of greater than 400 linear feet of the public way. The bond or security deposit shall be in an amount determined by the applicant and verified by the City Engineer to be equal to the cost of restoring the public way. These costs could include such activities as trench backfill, compaction, pavement restoration and associated traffic control.

1.1 Permit applicants shall provide the City with cash, a surety performance bond that has been fully executed by the applicant and its surety, guaranteeing Applicant's obligations under this paragraph or another type of security acceptable to City, in its sole discretion. If applicant provides City with a bond, it shall be in a form acceptable to City, in its sole discretion.

1.2 A permittee may request the requirement of a public way restoration bond or security deposit be waived by the City Engineer or designee if the permit applicant has completed to the satisfaction of the City Engineer or designee a project of similar or greater magnitude within the past 24 months that was constructed under a right-of-way permit issued by the City of Eugene.

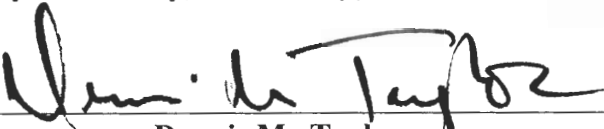
2. The permit applicant shall agree to indemnify and hold the City harmless from any loss, cost or damages arising out of or in connection with any activities associated with the permit.

The permittee is not required to indemnify and hold the City harmless for loss or damages caused by the City's negligence or intentional torts.

R-7.302-I Transfer of Telecommunication Licenses.

In the event a telecommunications license is transferred under the conditions contained in Chapter 3 of the Eugene, Code 1971, the new licensee shall be responsible for all the previous licensee's outstanding agreements and obligations to the City regarding use of the public way. These shall include but not be limited to maintenance of restored utility trenches within the public way and completion of all work authorized by outstanding permits.

Dated and effective this 14th day of January, 2004. D.J. TCC R.J.L.K.



Dennis M. Taylor
City Manager